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Design and Artists Copyright Society

Copyright Licensing Membership Agreement Terms and Conditions

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Established by artists for artists,
DACCS is a not-for-profit visual artists'
rights management organisation.

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1. Definitions and Interpretation

1.1 In this Agreement capitalised terms shall have the meanings ascribed to them in the Term Sheet or as set out below:

“Articles” means the articles of association of DACS as adopted and in force at the relevant time, a copy of which is available on the DACS Website;

“Associated Society” means a collecting society or rights administration society with which DACS has at the relevant time either reciprocal arrangements under which DACS and that society authorise each other to grant licences in relation to each other’s repertoire for the reproduction and other restricted acts and to collect monies owed to their respective members in relation to such repertoire or unilateral arrangements under which DACS is authorised to grant licences and collect monies in relation to the relevant collecting society’s repertoire;

“Authorised Representative” means the Authorised Representative set out in the Term Sheet, if any, and, if an Authorised Representative has been appointed, references to ‘Owner’ or ‘Member’ shall be construed as referring to the Authorised Representative where appropriate;

“Copyright Consumer” means any person who deals with or uses or wishes to deal with or use a Work in any form, manner or media whatsoever;

“Copyright Licensing Right” means the right to licence any and all rights in a Work, save for the Secondary Rights;

“DACS Website” means www.dacs.org.uk or such other web address as DACS may choose from time to time;

“Distribution Policies” means the Distribution Policies in force from time to time which are available on the DACS Website;

“Future Restrictions” means the Future Restrictions as set out in the Term Sheet;

“Secondary Rights Income” means any and all income, including blanket licence fees, royalties, levies, fees and charges, arising during the Term pursuant to blanket licences or title-by-title licenses of Works which is (a) collected by operators of blanket licensing schemes and / or (b) is designated by law to be collectively managed by licensing bodies and / or (c) arises from third party rights designated by law to be collectively managed by licensing bodies;

“Industry Sectors” means the following industry sectors:

- (a) book publishing;
- (b) public museums and galleries and cultural organisations;
- (c) newspaper and magazine publishing;
- (d) image banks and picture libraries;
- (e) television and film;
- (f) live events;
- (g) merchandising;
- (h) auction houses and commercial galleries;

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- (i) advertising, promotion and company communications;
- (i) universities, schools and colleges;
- (k) any other industry sector which may be decided upon by DACS from time to time;

"Member" means the Member set out in the Term Sheet for the duration that they are admitted to be a Member of DACS pursuant to the Articles and this Agreement;

"Owner" means the Owner as set out in the Term Sheet, who is the owner of the copyright in the Works;

"Privacy Policy" means DACS' privacy policy, which sets out DACS' policy for its collection and processing of personal data relating to individuals, in force from time to time which is available on DACS Website.

"Rights" means the Rights as set out in the Term Sheet;

"Secondary Rights" the exclusive irrevocable right to administer and collect all Secondary Rights Income;

"Standard Use" means all or any of the following uses of the Works:

- (a) reproductions inside print publications;
- (b) inclusions in television programmes, with the exception of biographical documentaries the subject matter of which is only the Artist, and all exploitation of such programmes;
- (c) digital reproductions on websites, with the exception of use of the Work as part of the branding or logo of the person, product and/or services promoted on that website;
- (d) inclusions in educational and cultural physical and digital products, including tour guides and touch screens in museums and galleries;
- (e) reproductions inside e-books;
- (f) blank post cards and greeting cards;
- (g) reproductions of previously licensed items of merchandise and stationery where the terms of the licence remain substantially unaltered;
- (h) inclusion in image banks;
- (i) renewals of licences for all of the above where the terms of the licence remain substantially unaltered; and
- (j) all future uses which may be notified to the Owner by DACS from time to time.

Standard Uses shall not include monographic publications, films, front covers of publications, use on the home page of any website, initial licensing of items of merchandise excluding (f) above, and any advertising uses.

"Term" means the Term set out in the Term Sheet;

"Territory" means the Territory set out in the Term Sheet;

"Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"Works" means the Works set out in the Term Sheet.

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- 1.2 References to “including” and “include” mean respectively including without limitation and include without limitation.
- 1.3 The words “other” and “otherwise” are not to be construed as being limited by any words preceding them.
- 1.4 A “person” includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on a business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representatives.
- 1.5 The words “writing” or “written” includes faxes, emails, and scanned documents sent by email.
- 1.6 Any expressions used but not defined in this Agreement, but which are defined in the Copyright, Designs and Patents Act 1988 (the “Act”) shall have the meaning ascribed to them in that Act.
- 1.7 Any expressions used but not defined in this Agreement, but which are defined in the Articles shall have the meaning ascribed to them in the Articles.
- 1.8 Words in the singular include the plural, and those in the plural include the singular.
- 1.9 Clause and schedule headings shall not affect the interpretation of this Agreement. References to clauses and schedules are, unless otherwise provided, references to the clauses and schedules of this Agreement.
- 1.10 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.11 If the Owner has not supplied an email address in the Term Sheet all references to “Owner’s Email Address” shall mean the Owner’s physical address as set out at the start of the Term Sheet or such other address as the Owner may notify DACS in writing from time to time.
- 2. Grant of Rights**
- 2.1 In consideration of one pound, the receipt and sufficiency of which is acknowledged, the Owner grants to DACS by way of exclusive licence in the Territory of the Rights in the Works, save only for those rights already licensed or assigned to another party as out in Schedule A of the Term Sheet.
- 2.2 The grant and licence in Clause 2.1 also includes the right for DACS to authorise and to sublicense third parties, including Associated Societies, to exercise and/or administer the Rights.
- 2.3 As the exclusive licensee of the Rights, DACS grants the Owner the non-exclusive right to exercise the Copyright Licensing Rights, subject always to the Owner notifying DACS immediately in writing of such licence.
- 2.4 For the avoidance of doubt, copyright in the Works shall remain vested in the Owner for the duration of this Agreement.

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3. Use of the Works

Tariffs

- 3.1 DACS may publish a tariff of licence fees payable by Copyright Consumers for Standard Uses of the Works, which it may set in its sole discretion and which may be varied from time to time, and shall charge Copyright Consumers for use of the Works in accordance with that published tariff.

Approvals

- 3.2 Where a Copyright Consumer requests a licence for a use which is outside of the Standard Uses or for which approval is set out as required on the Term Sheet DACS shall send the request to the Owner's Email Address or contact the Owner by phone and the Owner shall grant or withhold approval within ten Working Days.
- 3.3 Where the Owner has already granted approval over a particular licence to a Copyright Consumer and that licence has been granted by DACS, where that licence expires and the Copyright Consumer wishes to renew the licence on similar terms, the Owner agrees that DACS may grant such further licence without seeking the Owner's further permission.

4. Joint Owners of Works

Where the Owner has specified in Schedule that it does not own or control the entire copyright in any Work, the grant of the Rights by the Artist to DACS shall be limited to the Artist's ownership share.

5. Restrictions

The Owner agrees to comply with the Future Restrictions set out in the Term sheet.

6. Associated Societies

- 6.1 The Owner accepts that DACS relies on its Associated Societies for the correct interpretation and application of relevant national legislation due to the territorial nature of intellectual property rights. DACS will use its reasonable endeavours to ensure that its Associated Societies will assert in their own territory of administration the rights of the Owner in the same way and to the same extent as they do for their own members and that they will apply the same commissions, methods and means of collection and distribution of monies as they do for and to their own members.
- 6.2 Save as set out in Clause 6.1, the Owner accepts that DACS is not liable for the actions or inactions of any of the Associated Societies in respect of any Work.
- 6.3 DACS and the Owner agree and accept that the Associated Societies shall have the freedom to determine and impose whatever commissions they consider necessary for carrying out the Rights in their territories. These commissions shall be deducted from any monies payable to DACS by the Associated Society.

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7. Distribution of Royalties and Fees

7.1 All monies received by DACS arising from the exploitation of the Rights shall be dealt with by DACS subject to and in accordance with the Distribution Policies.

7.2 DACS shall be entitled to the fees, commissions or other costs set out in the Distribution Policies prevailing at the relevant time.

7.3 DACS shall not be deemed to hold any monies on trust for the Owner, whose sole remedy against DACS in respect of the same shall be limited to recovery of the amounts due to the Owner as calculated in accordance with the Distribution Policies.

8. Infringement of Rights

Claims By Third Parties

8.1 The Owner shall indemnify DACS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by DACS arising out of or in connection with DACS' exercise of the Rights in accordance with this Agreement.

Claims Against Third Parties

8.2 Where the Owner brings an infringement of any rights in a Work to DACS' attention or DACS otherwise learns of an infringement of any rights in a Work, DACS shall use its reasonable endeavours to preserve the Owner's rights in respect of the use or exploitation of the Work, provided that DACS shall not be obliged to incur any costs or issue legal proceedings.

8.3 The Owner gives DACS express authority (without obligation):

8.3.1 to initiate, issue and pursue legal proceedings, and also to defend legal proceedings, on its own behalf or on behalf of the Owner, and in its own name and/or the name of the Owner; and

8.3.2 if DACS elects, to have the conduct of any such legal proceedings, and the right to settle or compromise any such proceedings or any claims or disputes whatsoever on such basis and terms as DACS in its discretion may elect.

8.4 DACS shall not be under any obligation to institute or defend legal proceedings in relation to a Work.

9. Warranties

9.1 The Owner warrants and represents that:

9.1.1 the Owner has good right and full power to enter into this Agreement and to grant the Rights to DACS free from all claims and encumbrances upon the terms and conditions set out in this Agreement;

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- 9.1.2 the Owner owns all rights, title and interest in the Rights to the exclusion of all others and the entire copyright in the Works, save only as expressly set out in Schedule A;
- 9.1.3 the Works licensed to DACS under this Agreement do not infringe the rights of any third party; and
- 9.1.4 all information provided to DACS by the Owner is accurate and given in good faith.

9.2 The Owner shall indemnify and does hereby indemnify DACS from and against any claims, actions, proceedings, liability, loss, damage, costs and expenses of any kind directly or indirectly incurred by DACS in connection with any breach or non-performance by the Owner of any warranty, representation or undertaking set out in this Agreement.

10. Term and Termination

10.1 This Agreement, and the grant of the Rights, shall commence on the date of full execution of the Term Sheet, and shall continue until:

10.1.1 three months from the date of any notice of termination given by either party to the other party in writing (any such notice to DACS to be marked 'For the Attention of DACS' CEO', and, if an Authorised Representative has been appointed, notice to such Authorised Representative shall constitute notice to the Owner from DACS); and,

10.1.2 only if the Owner is also a Member, as set out in clauses 10.6 to 10.13 below.

10.2 This Agreement shall be binding upon and enure for the benefit of the successors and assigns of the parties.

10.3 Upon termination of this Agreement, the following clauses shall continue to apply: 8 to 11, 14 and 17 to 20.

10.4 Any licence granted by DACS to any third party in respect of any of the Rights shall survive the termination of this Agreement for any reason until the natural expiry of the licence.

10.5 Where, following termination of this Agreement and/or the cessation of the Member's membership, DACS receives monies in respect of any Copyright Licensing Rights or Secondary Rights exercised during the Term, any such monies shall be dealt with by DACS in accordance with the Distribution Policies to the Owner.

Cessation of DACS Membership

10.6 If the Owner is also a Member, the following Clauses 10.7 to 10.13 shall apply.

10.7 Upon termination of this Agreement, the Member shall, as of the date of such termination, cease to be a member of DACS. However, as set out above, the following clauses shall continue to apply: 8 to 11, 14 and 17 to 20.

10.8 On the death of a Member who is an Authorised Representative, the Owner shall nominate an alternative authorised representative to be the replacement Member.

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- 10.9 On the death of a Member who is not an Authorised Representative, his membership shall cease and shall not be transmitted to any other person, but this Agreement, and the grant of Rights, shall be binding on his successor and shall continue until:
- 10.9.1 the successor gives notice of termination pursuant to clause 10.1.1 above;
 - 10.9.2 the period ending either on 31 December in the seventh year following the year in which the Member's death occurred, unless within that period an admission takes place pursuant to 10.9.3 or 10.9.4 below; or
 - 10.9.3 if the successor is admitted to membership of DACS during such period, for so long as such successor remains a Member; or
 - 10.9.4 if a person is admitted during such period to membership of an Affiliated Society in respect of the rights of the deceased Member, up to the date of such admission.
- 10.10 Any payment to which the Member would, if living, have been entitled in accordance with the Distribution Policies in respect of any period prior to the admission of such successor shall be made to the Member's personal representative until a successor is admitted, or until the end of such seventh year set out above, whichever is the earlier. Upon the admission to membership of any successor, any payment to which the Member would, if living, have been entitled in accordance with the Distribution Policies in respect of any period subsequent to such admission shall be made to such successor.
- 10.11 In the case of:
- 10.11.1 a Member being a limited company, its membership shall cease in the event of and upon the liquidation of such limited company other than voluntary liquidation for the purpose of reconstruction; and
 - 10.11.2 a Member being a partnership, in the event of and upon such partnership ceasing to carry on business.
- 10.12 Upon a liquidation or cessation of business under Clause 10.11, the Rights granted to DACS shall remain in full force and effect for a period ending on the 31st day of December in the seventh year following the year in which the liquidation or cessation of business occurred. Any payment to which the limited company or partnership would, if it had remained a Member, have been entitled in accordance with the Distribution Policies in respect of such period shall be made to the person entitled for the time being to receive debts due to the limited company or partnership.
- 10.13 The membership of any Member shall immediately cease:
- 10.13.1 upon the expiration of the longest period for which copyright subsists in any of the Works under the Act; or
 - 10.13.2 in the case of any Member, being an executor or administrator, upon his having disposed of all interest in all subject rights which may have vested in him as such executor or administrator.

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11. Third Party Rights

This Agreement is not intended to be enforceable by any third party, other than the successor of the Owner, if applicable, and Associated Societies.

12. Variation

12.1 DACS may change these Terms and Conditions at any time provided it gives notice as described below.

12.2 If DACS wishes to make a change to these Terms and Conditions, it will give the Owner at least 14 days' notice of any change.

12.3 At any time up to one month from the date of the notice the Owner may give notice of termination to DACS in writing (to be marked 'For the Attention of DACS' CEO'). If the Owner does not serve notice of termination within the relevant period, the Owner will be treated as accepting the changes.

12.4 DACS may amend the Distribution Policies in accordance with the Articles.

12.5 The Articles may be amended in accordance with the Articles themselves.

12.6 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

13. Waiver

The Owner waives any right the Owner may have against DACS in respect of any exploitation of rights in the Works which may have occurred prior to the Term, and in respect of any revenue under any licence received by DACS before such date.

14. Further Assurance

Each party agrees upon request of any other party from time to time promptly to execute and deliver all deeds and documents and to do all acts and things as shall be necessary, expedient or desirable to give effect to the terms and/or purpose of this Agreement.

15. Severance

15.1 If any provision or part of a provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16. Limitation of Liability

16.1 Nothing in this Agreement shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

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16.2 Save as set out in Clauses 8.1 and 9.2, neither party shall be liable to the other for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

17. No Partnership

This Agreement shall not be deemed to create any partnership, joint venture, employment or agency relationship between any of the parties.

18. Entire Agreement

18.1 The Term Sheet and these Terms and Conditions, which incorporate the Distribution Policies, embody all the terms agreed between the parties relating to the Rights and no oral representations, statements, inducements, warranties or promises by either party shall be binding and valid.

18.2 If the Owner is a Member, then the Owner shall also be bound by the Articles.

18.3 In the event of any conflict between the terms of the Term Sheet, the Terms and Conditions, the Distribution Policies and, if applicable the Articles, the terms set out in the relevant document shall prevail in the following order:

- (a) if the Owner is also a Member, the Articles; and then
- (b) the Term Sheet; and then
- (c) the Terms and Conditions; and then
- (d) the Distribution Policies.

19. Governing Law and Jurisdiction

19.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

19.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

20. Execution

This Agreement may be executed in any number of counterparts (including by way of faxed or scanned counterparts) and all counterparts shall together constitute one and the same Agreement, and the date of the Agreement shall be the date specified on the Term Sheet, or, if not specified, the date on which it is executed by the last party.